

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

OHIO GAS COMPANY

Employer

and

CASE NO. 8-RC-16008

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION NO. 245

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

¹ The parties have filed briefs which have been carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service employees employed by the Employer at its Bryan, Ohio facility in the following classifications: gas controller, lead service technician, service dispatcher, construction and maintenance technician, meter reader, meter reader trainee, meter technician, meter technician trainee, service technician, service technician trainee, lead construction and maintenance technician, lead meter technician, but excluding corrosion technician, lead control technician, engineering technician, project coordinator and seasonal labor, clerical employees, human resources employees, accounting personnel, cashiers, data processors, sales representatives, draftsmen, professionals, managers, security guards and supervisors as defined in the Act.

There are approximately 49 employees in the unit found to be appropriate. The sole issue in this proceeding is the voting eligibility of 10 individuals employed in the classifications of gas controller, service dispatcher and lead service technician.² The Petitioner seeks a unit which includes these ten employees. Conversely, the Employer asserts that the gas controller, service dispatcher and lead service technician classifications are supervisory positions within the meaning of Section 2(11) of the Act and should be excluded from the unit.

The Employer is an Ohio corporation engaged in the distribution and sale of natural gas with an office and place of business in Bryan, Ohio. The Employer has contracts with two

² The record evidence demonstrates that there are four gas controllers; two service dispatchers and four lead service technicians.

pipeline companies which supply the Employer with gas. The Employer then provides this purchased gas to its 45,000 customers. The amount of gas that is purchased from the two pipeline companies is determined by the Employer's upper management. The Employer uses gas controllers to monitor the supply of gas in order to meet the contractually set amounts of gas for each day.

The gas controllers are primarily responsible for monitoring the distribution of gas through the Employer's distribution system. In addition to their monitoring duties, they are also responsible for responding to the system's emergency alarms and other emergency situations. Gas controllers are also responsible for answering and responding to customer calls after the Employer's regular business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

The Employer employs four gas controllers, who work at the Employer's facility in Bryan, Ohio. There is a gas controller on duty at all times, 24 hours a day, seven days a week. The gas controllers have an office in the Employer's Engineering Building. There is a computer and a telephone located in that office. The gas controllers are supervised by Gordon Coy, the supervisor of gas control.

Each day, the contractually determined amount of the gas flow is provided to the gas controllers. The controllers adjust the valves to the correct amount of gas flow and monitor it to insure that the contractually determined amount of gas flows through the system. The gas controllers have no authority to change a contract. The gas controllers use the computer to track the flow of gas through the Employer's distribution system and to adjust the valves to increase or

decrease the flow of gas.³ The record demonstrates that the gas controllers spend approximately 40% of their time monitoring the gas flow.

The gas controllers also spend approximately 40% of their time handling all supply and emergency situations. The record evidence states that the computer has a system of alarms that sound in the event of low pressure, freeze-offs, control failure, power outages and other losses of supply that affect the system. The Employer has categorized emergency situations as class one, two or three. The Employer's compliance manual sets forth the specific procedure that the gas controllers must follow depending on the class of emergency. In the event of an emergency situation, the gas controllers follow a set procedure to respond to the problem.⁴ The gas controllers contact a service technician to go to the site of the emergency and report back to the gas controller.⁵ Depending on the nature of the problem, the gas controllers also respond to the situation by calling the appropriate entity to correct the problem, such as the phone company, the fire department or the police.

Upon learning about a problem, either from a customer call or from an alarm, the gas controllers are responsible for determining the severity of a situation. The gas controllers are trained by the Employer's management personnel to determine whether a service technician should be dispatched to the location of the problem. In determining which service technician to call, the gas controller contacts the service technician who is on call in the town where the problem has been reported. The gas controllers rely on an on-call list prepared annually by the Employer, which designates the on-call service technician schedule. The service technician is

³ The record reflects that the gas controllers have some authority to exceed the contract in certain situations.

⁴ The record demonstrates that employees are directed in the procedures to be followed in emergency situations. The Employer's safety coordinator, Rick Bishop, conducts safety meetings in which employees are trained in emergency response.

responsible for checking into the complaint and reporting back to the gas controller by either radio or telephone to explain the situation. In a routine situation, the service technician would report that the situation has been resolved. If the service technician cannot resolve the problem, then the gas controller and service technician jointly determine if additional assistance is necessary. If they determine that further assistance should be sought, then the gas controller utilizes the Employer's telephone list. The telephone list provides the names and numbers for all service technicians and is sectioned into geographical areas. Each section has a calling priority pre-determined by the Employer. The gas controller ascertains the geographical area where the problem is located and calls the individuals on the telephone list according to the priority set by the Employer.⁶ The record reflects that if the problem is serious, such as a fire, the gas controller contacts Doug Saul, the Vice-President of Operations, before contacting the area manager.

The Employer has two service dispatchers who work at the Bryan facility. They both work during the Employer's regular business hours, from 8:00 a.m. to 4:30 p.m., Monday through Friday. Their responsibilities include answering the telephone, logging calls and complaints and determining if a service technician should be dispatched. Since the service dispatchers work during regular business hours, the service dispatchers contact the nearest available on duty service technician on duty.

Gas controllers perform the functions of the service dispatchers after regular business hours. In this regard, gas controllers take customer calls and complaints and determine if a service technician should be dispatched to the area. With regard to dispatching service technicians, the gas controllers utilize the on-call list which is prepared and provided by the Employer.

⁵ In the event of a major problem, the gas controller would contact the supervisor first.

The Employer also employs four lead service technicians.⁷ Each lead service technician is assigned to a specific service area. The lead service technicians work from Monday to Friday from 8:00 a.m. to 4:30 p.m. All service technicians, including lead service technicians are assigned the use of a service truck. The lead service technicians perform the same job as service technicians, but they spend approximately 30 minutes of each day distributing the job assignments prepared by the area manager to the service technicians.

The evidence indicates that the lead service technicians spend 5% of their time assisting the area manager with scheduling work and processing administrative reports. On occasion, the lead service technicians will substitute for an absent area manager in completing routine paperwork. Lead service technicians do not attend management meetings or perform any functions beyond routine paperwork, even in the absence of the area manager. In the event of a problem, the lead service technician must contact Saul for further instructions.

The area manager prepares the job orders for each day and gives those orders to the lead service technician who then assigns the job orders to the service technicians. The lead service technicians responsibilities are set forth in the job description for that position. The lead service technicians locate and protect gas lines; coordinate with contractors or construction crews during installation, repair and clean up new or existing lines and mains. The lead service technicians also maintain, repair and paint meter sets; install new meter sets and respond to customer questions

⁶ The first person contacted in each town is the area manager. The priority is based on seniority.

⁷ The record evidence reflects that the Parties stipulated to the inclusion of service technicians in the unit.

and concerns. The lead service technicians inspect, test and repair equipment. The Employer has designated four priority calls, which are handled first. The service technicians are also responsible for general maintenance throughout the system. The testimony adduced at the hearing indicates that the lead service technician rotates assignments on a daily basis, but also assesses each service technician's abilities when making such assignments.

The lead service technician spends approximately 15 minutes both in the morning and at noon relaying job orders. The remaining part of their workday is spent performing the same work as the service technicians.

The record further indicates that the lead service technicians are on the call list with the same frequency as the service technicians. The lead service technician is listed on the Employer's telephone list. On the emergency call-out list, the lead service technicians are designated by the Employer as the second contact, after the area manager. The lead service technicians and service technicians are paid hourly, are eligible for overtime and have the use of a service truck.⁸

II. ANALYSIS

Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

⁸ The record reflects that the lead service technicians are paid a small amount more than the service technicians.

The Board has consistently found that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on an individual, provided that the authority is exercised with independent judgment and not in a routine matter.⁹ It is also well established that the burden of proving supervisory status rests on the party asserting such status.¹⁰

On the basis of the record in the instant proceeding, I find that the gas controllers, the service dispatchers and the lead service technicians are not supervisors within the meaning of Section 2(11) of the Act and are properly included in the unit found appropriate.

It is clear from the record evidence that the gas controllers do not have the authority to hire, fire, transfer, suspend, layoff, recall, promote, reward, discipline, adjust grievances or effectively recommend any of these actions. The evidence demonstrates that the gas controllers have no subordinates and are not engaged in the evaluation of any employees. All functions of the gas controllers are supervised and managed by the manager of gas control.

The Employer argues that the gas controllers authorize overtime of service technicians and other employees who are dispatched to a problem area. The record reflects that the gas controllers have a limited role in deciding when to dispatch an off-duty employee. The Employer sets forth in its compliance manual, safety training and other specialized training, the circumstances when it is appropriate for a service technician to be dispatched. The on-call procedure and emergency call procedure are processes that are prepared by the Employer. The gas controllers use no independent judgment to determine which service technician will be called after hours. The on-call lists and the telephone list, which indicate the priority of technicians to

⁹ Pepsi-Cola Company, 327 NLRB No. 183 (1999); Providence Hospital, 320 NLRB 717 (1996); and Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986)

call, are prepared and distributed by the Employer. The only determination made by the gas controllers is whether to dispatch a service technician.¹¹

It is clear from the record evidence that the gas controllers are specifically trained in how to respond to numerous emergency or problem situations. For example, it is routine for a controller to dispatch a service technician to a location when a customer reports the odor of gas. In the event of an emergency, which cannot be controlled by the dispatched service technician, the gas controllers jointly decide with the service technician at the scene what further assistance is required. The gas controllers then contact an area manager or their supervisor for further instructions. It is clear that the established protocol for responding to emergency situations does not require independent judgment of the gas controllers. In fact, in the event of an emergency, the decision to initiate further action beyond calling the service technician is a collaborative decision between the service technician and the gas controller.

Both the gas controllers and the service dispatchers call service technicians to the site of a problem. The gas controllers and service dispatchers utilize the call lists which are prepared by the Employer. No independent judgment is utilized by the gas controllers and service dispatchers to determine which service technician should be sent into the field. The service dispatchers do not supervise any employees. No evidence was submitted during the hearing to indicate that the service dispatchers have any of the indicia of supervisory authority as set forth in Section 2(11) of the Act.

¹⁰Billows Electrical Supply of Northfield, Inc., 311 NLRB 878 (1993). See also, The Ohio Masonic Home, Inc., 295 NLRB 390 (1989).

¹¹ See Mississippi Power & Light Company, 328 NLRB No. 146 sl. op. pgs. 8-9 (1999). In this case, the Board determined that the role of dispatchers in assigning field employees due to problems or emergencies is circumscribed and does not require the use of significant, if any, independent judgment.

It is clear from the record that the lead service technicians have no authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, adjust grievances, effectively recommend any such action. The record indicates that all service technicians, including lead service technicians, have the authority to work overtime based on the Employer's customer service policy.

As noted above, the lead service technicians spend approximately 30 minutes of each day assigning job orders to other employees. The record indicates that in performing this function the lead service technician rotates the assignments on a daily basis and assesses each service technician's abilities to perform the work. While the lead service technicians do not evaluate employees, the record indicates that the lead service technicians occasionally observe the work of the service technicians and make suggestions to service technicians as to how to improve their performance.

The Employer asserts that the lead service technicians are supervisors within the meaning of Section 2(11) of the Act. Specifically, the Employer submits that the lead service technicians assign work to the service technicians; train new service technicians; order overtime in the field and act as substitutes for the area manager.

I conclude that the record establishes that lead service technicians function as leadmen rather than statutory supervisors.

It is clear from established case law, that leadmen, even those who perform work assignment functions, do not automatically have supervisory authority as set forth in Section 2(11) of the Act. In Somerset Welding & Steel, Inc., 291 NLRB 913 (1988), the employer utilized leadmen who made job assignments to other employees and inspected the work of employees. The leadmen on occasion prepared employee evaluations and were members of the

employer's safety committee. The Board determined that the leadmen did not exercise independent judgment in assigning work, but were merely responsible for distributing predetermined work assignments and making sure the work was completed to predetermined specifications. Furthermore, the Board concluded that the leadmen were in daily contact with a supervisor who distributed their work assignments.

In the instant case lead service technicians do not use independent judgment in making job assignments. The lead service technicians have more seniority, experience and skill than the other service technicians. In the event that the lead service technicians assess the skills of the service technicians in assigning work, it is clear that the assignments are based on skill and seniority.

In Millard Refrigerated Services, Inc., 326 NLRB No. 156 (1998), the Board found that two leadmen who assigned service employees to various tasks and rotated employees between different jobs and crews did not responsibly direct employees. The Board determined that the leadmen were experienced employees who knew which of their fellow employees possessed greater skill and experience and their use of this information when assigning service work did not establish that they exercised independent judgment. In the instant case it is clear that lead service technicians make assignments in a routine manner utilizing their seniority and skill. The record evidence indicates that the lead service technicians direct the service technicians in a routine manner and the responsibility to direct the work given to service technicians is based on their higher level of skill and greater seniority.

Furthermore, the Employer asserts that the fact that the lead service technicians train, guide and evaluate new employees, as well as providing guidance to the service technicians, renders them to be supervisors within the meaning of Section 2(11) of the Act. It is clear from

the record evidence that new employees are trained and evaluated by all service technicians. The area manager assigns the trainee to work with all of the service technicians who report back to the area manager with the trainee's progress. No evidence was submitted during the hearing to demonstrate that the lead service technician's role in training, evaluating or directing new employees is any different from that of a service technician. The record clearly reflects that the lead service technician has no authority to evaluate the service technicians. The lead service technicians do not perform appraisals or reviews of any employees. The evidence demonstrates that, on occasion, a lead service technician will inform a service technician how to perform a task better, but no evidence was submitted to show that the lead service technicians discipline, reward or even evaluate the performance of any employees. The lead service technicians have no authority to effectuate any personnel decisions, including discipline or rewarding employees for the quality of their work.

The Employer also asserts that the lead service technicians substitute for the area manager. It is clear from the record evidence that the lead service technicians occasionally substitutes for an absent area manager. In this connection, the lead service technicians complete routine paperwork in the absence of the area manager, but only in a limited capacity. The record indicates that the lead service technicians do not attend management meetings in the absence of the area manager. The lead service technicians do not make managerial decisions in the event of an emergency. Based on the foregoing, I find that lead service technicians are not supervisors within the meaning of Section 2(11) of the Act.

In conclusion, I find that the lead service technicians, the gas controllers and the service dispatchers are not supervisors within the meaning of Section 2(11) of the Act and are properly included in the unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local Union No. 245.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses

of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **March 13, 2000**.

Dated at Cleveland, Ohio this 28th day of February 2000.

/s/ John Kollar

John Kollar
Acting Regional Director
National Labor Relations Board
Region 8

2575-4200